

LAKE COUNTY PLANNING BOARD
August 11, 2010
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Harlan Gipe, Sigurd Jensen, Steve Rosso, John Fleming, Brian Anderson, Janet Camel (est. 7:05)

STAFF PRESENT: Joel Nelson, LaDana Hintz, Tiffany Lyden, Lita Fonda

Bob Kormann called the meeting to order at 7:00pm.

Steve Rosso shared a correction to the minutes on pg. 7 at the bottom, where Skaggs Lake was listed as Scapes Lake. **Motion by John Fleming, and seconded by Steve Rosso, to approve the July 14, 2010 meeting minutes as amended. Motion carried, 5 in favor (Bob Kormann, Sigurd Jensen, Steve Rosso, John Fleming, Brian Anderson) and 1 abstention (Harlan Gipe).**

FARM ROAD FIRST MINOR SUBDIVISION

LaDana Hintz presented the staff report. (See attachments to minutes in the August 10 meeting file for staff report.) One comment was received since the staff report, and handed out to the Board. (See attachments to minutes in the August 10 meeting file for staff report.) LaDana pointed out a correction on condition #23, which read McDonald Lake Road but should say Farm Road and Minesinger Trail. She suggested this be corrected with the motion.

John referred to the water supply and sewage disposal section on pg. 3 at the top and the Starkel letter. He was aware it was difficult to get wells in the area. What area did the statement about the 15 wells cover? LaDana said this meant in the section. She added that Environmental Health review included the wells and waste water system.

Steve asked about perpetual condition #20 on pg. 19. He asked for clarification on the 100' setbacks. LaDana replied there should be 100' from agricultural lands. The applicants were showing 100' from both Minesinger and Farm Road and 100' from the agricultural land to the west. Steve asked about between adjacent properties. LaDana explained 100' wasn't needed between adjacent properties within the subdivision. Steve asked about condition #20.b, which listed 100' setbacks from side or rear property lines. LaDana said this came from the covenants, so maybe this was something they were going to require. She suggested the agent could clarify.

Bob Kormann asked what was on the south end of lot one, and whether that was residential or agricultural. LaDana replied this was residential. It was a long skinny parcel. Bob checked whether or not it needed 100' setback. He suggested checking with the agent. LaDana said it was a 10-acre tract, and thought it likely was not agricultural.

Diana Luke of Carstens Surveying commented on behalf of the applicant. On condition #13 for perimeter fencing, they would like to see this stricken. The governing body may require perimeter fencing in areas with livestock grazing. This area had been maintained for many years without such fencing, nor did the surrounding landowners have perimeter fencing. On condition

#20, there may be a misprint. They showed a 10' setback for inside property lines on the preliminary plat. They considered the lot to the south a residential property so it had 10' setbacks. If the Board wished to see that changed to 100', it was not an issue to change it. She repeated LaDana's observation about changing the road name on pg. 23 to Farm Road and Minesinger Trail.

Steve asked Diana if the plan for the property was to put the lots up for sale right away or if the current owner would continue the current use for now. Diana said he may put them up for sale, but he was going to continue to utilize them for agriculture until such time as the lots actually sold. Steve said fences might actually be in the way. Diana said this was the concern. Currently they had a clean bill of health from the weed dept. If you start fencing, you have a dead space along the fence that's got to be maintained for weeds. Bob asked if a family transfer could be done here after the subdivision. LaDana pointed out it would be in a subdivision.

Public comment opened:

Steve Engel: He asked where the property was and what it was like.

Bob Kormann: He described the location and property. It was level farm ground east of the highway on Minesinger Trail, turning near the Jolly Packrat, about a mile and a half or two miles down. It was sandy loam. It was hay ground currently, and some guys flew their model airplanes there.

Steve Engel: He asked if water was available.

Bob K: He guessed Charlie had a well, since there was a residence there. As far as the well, it's buyer beware. It would go through DEQ.

Steve E: He asked if it was lake level.

Bob K: They could drill a well. That's always a crapshoot. It's tough to get water in there.

Public comment closed.

Bob asked the Board for comments on the fence. Steve suggested the fencing could be withheld until the property was offered for sale, so the land could continue its current use until then. Bob asked if that was enforceable. LaDana said the problem was it wasn't enforceable. Harlan pointed out it might not sell for years, so that got into the same problem. LaDana outlined that the Board was reviewing the impacts to agriculture. It would seem there would be impacts. Historically, perimeter fencing has been required to mitigate impacts. They could propose another method. At this point they didn't want to do the perimeter fencing because the neighbors didn't have it. Steve said the idea behind the perimeter fencing was to fence between the existing agricultural and the residential lots. If the use remained the same as the neighbors, the reason for fencing might not be as important. LaDana noted they were putting a residential subdivision in an agricultural area. They needed to make sure the surrounding properties could

still be used for agricultural purposes without being impacted. The Board discussed fencing issues further.

Harlan asked for clarification on whether the fence was for the outside of the 80 or around each lot. LaDana said this was around the 80. Steve thought that didn't seem so detrimental for continuing the current use. Some of the other Board members agreed they misunderstood where the fence was to go.

Bob asked Diana about the covenants and property appearance standards. He noted that Charlie's place was disgraceful. How did this work? Would Charlie have to clean his place up for this? Diana tried to recall the exact wording of the covenant. The covenants did apply to him, to lot 4. Bob said he'd have to get that cleaned up. He thought property appearance standards should be better defined. LaDana read, "No lot shall be used or maintained as dumping or storage area for rubbish or garbage, recycling or target ranges." Bob was concerned about the 80 becoming an eyesore, which was what the proposed 40 currently was. He asked the staff to make sure to tighten the appearance standards up, and to make sure they applied to Charlie's place also. LaDana asked if additional language was proposed, and reread the language on request. Bob said everybody's definition of rubbish was different. He lived there and drove by there daily. Most of the people in the area wished that would get cleaned up. He suggested Diana might fight this battle.

Steve referred to condition #12, which spoke to covenant language. Was that the only place in the conditions? LaDana affirmed. Steve suggested adding a comment to #12 about increasing the level of appearance standards in the covenants. Bob thought that was fine. They could get more detailed, and include junked cars, old scrapped buildings and general garbage around there. Steve asked about a County law regarding abandoned vehicles and junk on residences and property. Joel said there was a junk vehicle law. He suggested the agent, a former Sanitation employee for the County, could speak to the law. Diana recalled one subdivision farther south on Farm Road that had to [inaudible] with Environmental Health to make sure they were not in violation of solid waste or junk vehicle laws prior to plat [inaudible] subdivision.

Bob thought that would be good, to say specifically junk vehicles and other solid waste needed to be addressed before final approval. Joel said this sounded like another condition to bring the property into compliance with applicable junk vehicle laws. Steve thought rewrites in the covenants would go into #12 and a requirement would be another condition. Janet asked that they also check the very beginning statement in the covenants to make sure the covenants did not exclude the owner. This happened in her subdivision.

Steve said to prevent the property from returning to its current condition after being cleaned up, this would have to be in the covenants. In addition to a new condition, #12 would need a change to say the covenants would be added to, to include preventing the storage of junk vehicles and solid waste as determined by the Sanitation Department of Lake County. Bob asked staff about the wording. Joel thought something could be said about perpetual compliance with the junk vehicle laws, but that didn't mean all the junk vehicles would go away. Steve checked if it was a preliminary condition, they had to clean it up now, prior to final plat. LaDana agreed. Steve said if it was in the covenants, the County wouldn't have to police it, although it also meant it might

not get policed. Bob said they would like to see lot 4 cleaned up before the rest of the subdivision was approved, and then they would like to have a perpetual condition as well as a covenant that the property had to be maintained. Joel thought it sounded like a perpetual condition that required ongoing compliance with the junk vehicle laws, and then a requirement to the covenants that required stricter property appearance standards. That way, the staff wasn't enforcing. Bob agreed he didn't want to burden the staff with it. He wanted it to be in compliance with the rest of the subdivisions that they do. He didn't want to start off with the 40-acre piece being what it is, without it getting cleaned up. He asked if staff could help with the wording on that.

Joel rephrased that they would like a condition #16 added to the preliminary plat conditions that prior to final plat approval, the property owners shall demonstrate compliance with applicable junk vehicle laws. Bob added solid waste. Joel didn't know about solid waste law. Diana noted when she worked for Lake County, they did go out on solid waste issues. If they were harboring vermin, there were Montana statutes. If there was rubbish, they could order you to clean it up if certain health violations [inaudible]. They would have to take a look at it to see whether that would eliminate Charlie's. You could file a complaint and Environmental Health would take a look at it as far as whether there was a solid waste violation. Joyce T-Weaver suggested that they might want to make sure broken-down appliances and fixtures did not appear there. Bob thought all that stuff was probably out there. Joel asked if they were trying to address environmental health concerns or visual concerns. Bob said both. He was looking for Charlie to clean his place up prior to final approval and have a perpetual condition or a covenant where appearance standards were defined. Diana thought solid waste statutes of MT law were something Environmental Health would work with. As far as appearances, she didn't know if there was something any department could do. Joel said typically with perpetual conditions, the requirements would be enforceable with the building notification permitting process. He didn't want to receive complaint calls from one lot about the appliances sitting in another lot. The owner should get those calls. Bob checked the County would deal with the junk vehicles, and that was all. Joel added the County would deal with solid waste when there's an environmental health concern.

Bob thought this was interesting, since the Board sometimes defined the type of structure that could go into a subdivision, but they didn't have the tools to address a general cleanup. Joel asked which primary review criteria he might be addressing, such as impacts on the natural environment or public welfare. John suggested in the conditions for preliminary approval, have the existing lots comply with State solid waste statutes as applicable, as a condition of approval. He thought they should try referring to State laws. If you wanted to go with a perpetual condition, add one to say covenants will address solid waste conditions. The landowners had to support or enforce their own covenants, but you should give them the tools.

Janet explained that counties could adopt decay ordinances. Lake County did not have one. Missoula County did. They defined decay in their ordinance. She suggested that might be a definition to add to the covenants as a condition that they need to keep their lot free of decay, as defined. The definition went beyond the State law to be more specific. Bob liked the idea. He asked if this would be put in condition #12. Did the Board need to determine language tonight or could the staff come up with language? Joel recommended that the Commissioners come up

with language. He thought they'd be willing to work with the owners and agents to come up with appropriate language. He asked the Board to make clear whether their intent was to just address sanitation or if they were trying to expand into scenic views, which was part of the natural environment according to the Growth Policy, which was under the draft findings by staff. They could address the impact on scenic views. Janet made the recommendation to address that. It was a scenic area. Joel pointed out from pg. 13 where the findings might be modified, depending on what the Board found.

Steve brought up water issues. The State and Tribe have not agreed on water use. Did the Board need to address this? Janet explained 'first in time, first in right' so the Tribes have the water right, but they are adjudicating the quantity of water that they would maintain and hold for their own use. It wasn't something the County had control over. She thought the section Steve referred to was a disclaimer statement, saying they had no control. There was no guaranteed water right for anyone here until a compact is reached. She offered to have the Tribal attorneys look at the language to make sure it was worded properly and precisely. The wording was close.

Steve asked about the depth of the existing well on the 80 acres. He hoped for more information on the Starkel concern. LaDana said the well was 133'. In the report, the wells varied. It would be reviewed through Environmental Health. Janet asked if the staff could make a comment to DEQ. LaDana explained DEQ would receive information that a concern was raised. Diana added detail. Janet asked if a pump test should be a condition. Steve felt confident that DEQ would take care of this.

Bob highlighted areas the Board might clarify, including #13 with the fence and whether or not to change it, #20B needed correction to 10' from 100', and #23 needed correction to Farm Road and Minesinger Trail from McDonald Lake Road.

LaDana noted for #20b that 100' was needed from the west side which was the rear on the little lots. Janet suggested adding another one to #20, requiring 100' from a rear property line and 10' between lots. LaDana clarified this was the internal lot lines. Steve thought the 100' from agricultural lands covered the rear of the property lines. LaDana said they weren't considering the lot to the south as agricultural land. Bob thought this could be misinterpreted that the internal lots needed 100'. Did they need to state internal lots would be 10'? Steve thought the largest applicable setback could apply as the enforced one. Discussion ensued. LaDana said there was also an irrigation ditch on the south side, which pushed that setback to 50'. Steve said the 50' was not shown on the plat when they drew the setback line. LaDana explained the setbacks weren't shown on the final plat. They showed up in the covenants and perpetual conditions. John asked if they needed to do something with #20. LaDana asked if they wanted to do something with the internal property lines. Janet suggested a minimum of 10' from internal side or rear property lines. Joel suggested striking #20b. John agreed and suggested putting in a 10' setback from internal property lines. Steve suggested changing #20b to this.

Motion made by John Fleming, and seconded by Steve Rosso, to adopt staff recommendation for conditional approval with the following changes and additions:

- **Add to the conditions of preliminary approval as noted in the discussion (regarding junk, waste and appearance)**

- **Add a perpetual condition addition to achieve the same purposes, for continuous compliance with State solid waste and junk vehicle laws**
- **Strike wording of #20b and replace with the wording necessary to achieve a 10' setback from internal property lines**
- **Change the road name in #23 to Minesinger and Farm Road from McDonald Trail.**

Motion carried, all in favor.

MANY SPRINGS FLATHEAD LAKE RESORT MAJOR CONDOMINIUM – INTRODUCTORY

Joel Nelson mentioned the Board might note some transitions in the formatting of the staff reports, with the intent to make them briefer and more readable. He presented the introductory staff report. (See attachments to minutes in the August 10 meeting file for staff report.) He pointed out that sometimes the buildings were referred to as Buildings A, B and C, and in other places they were referred to as Buildings 1, 2 and 3.

Janet asked if Joel got a copy of a letter sent to the Tribe's Planning Office. She hadn't seen it yet, as the subdivision application was mailed late to her. (Editor: apologies.) Joel thought it was in there and suggested they talk about it further at another time.

Steve pointed out a misprint in item #7 on pg. 12. Joel noted the numbering on pg. 12 was off by one. Steve asked if parkland dedication was intended for public access or just the subdivision residents. Joel said it could be done either way. They could do cash in lieu or a private park. Steve summed that dedicating the lakeshore didn't mean it would be open to the public, and asked if people could do a combination. Joel said the regulations didn't say, but a combination had been allowed before.

John thought on pg. 11 a buffer sounded like a doable thing preferred by local residents in the zoning area. Lawn wasn't exactly what was wanted there, given fertilizers and all that. What was a buffer supposed to look like, and was it already taken care of? Joel said the zoning regulations required a diverse mixture of native vegetation and mix of trees, shrubs and native grasses. That was addressed by the Board of Adjustment (BOA) variance. The subdivision regulations required the applicant to define buffer strips along waterways. The old regulations that this application was under did not require a minimum buffer strip width. They've submitted the buffer strip as the 20-foot lakeshore protection zone, which they would manage in compliance with the lakeshore protection regulations. There wasn't a lot they could do at this point and still comply with the BOA approval.

John referred to pg. 20 and stormwater issues. It appeared this was not being grandfathered. Were staff asking the applicants to do something different with stormwater? Joel asked if John meant grandfathered with the zoning or with the subdivision review. John asked if a variance to stormwater had been requested. Joel said no, and John felt his question was answered.

John moved to pg. 23 and the comment that the Finley Point fire chief had no road concerns. Wasn't this steep? Barbara Sanders replied they came out and did a mock-up in February. Steven Engel detailed their determination was to fight it from the road, which was a practice they

used at other properties. If the time of year provided access, they would probably come in with a boat.

Janet asked if the motel was year-round. Joel and Barbara responded it was seasonal. Steven E said the condos were proposed as seasonal. Barbara added the condos to the south of them, who use their access, were also seasonal. Those were a part of this property many years ago. Joel couldn't recall a subdivision approved with that stipulation from the County, but this particular one might require that type of stipulation. Steve asked if that could be enforced. Joel said this was why it hadn't been done previously—it was difficult to enforce.

Bob asked how much distance there was between building B and building C to the lake. Joel pointed out the dashed line of the 50' setback line. Steve observed this went right through the middle of building B. Bob asked about a person who bought units 5 and 4 in building B and wanted to remodel. He would not be allowed to get to the front of the building with vehicles or such during the construction process because it was the lakeside buffer strip? How would this work for remodeling or maintenance or other construction requiring access from the building front? Joel explained they would have to get a lakeshore construction permit to access through the lakeshore protection zone. They would not be prohibited from moving vehicles or equipment through the buffer strip. It would be tough to do. Barbara didn't think there'd be remodeling. They couldn't go out any further. Steven E said they'd use ladders or scaffolding. What they proposed for the remodel phase at this point was easily handled. The materials could be carried in and out, without vehicles. Barbara added some detail.

For the seasonal use (May through September), Bob asked if a gate would be put up in the off-season. The applicants explained the residential house in which they lived year-round was down the road, so the road was maintained. The house had been year-round so there was someone there. The water rights reflected this. The residence had a year-round right, and the rest of the operation was seasonal.

Mark Johnson, the project architect, spoke on behalf of the applicants and offered to answer questions or give clarifications. He summarized the gist of the project.

Steve asked if there were restrictions on multiple owners or timeshare. Mark said this hadn't been proposed. Barbara didn't think that could be limited. She thought all the owners would have to agree to a timeshare. That isn't proposed in their CC&R's.

Steve asked if the lawn got fertilized. Barbara said no. She thought some natural fertilizer might have been used on it. They didn't use weed killer. They pulled weeds on the property. They watered the lawn. Steve's experience with lawns on the lake was that people thought if they didn't fertilize, the lawn would look bad. He asked the applicants to consider the possibility that even with the variance granted that allowed the lawn but restricted from fertilizing, it might be a better looking buffer zone with some native plants and other things that didn't require fertilizer. Barbara mentioned all the children that play on the lawn. Barbara noted there were other plants out there that were native, and the rest of the property would have native plants. The lawn was a big thing for visitors, both those who stayed and those who came to the restaurant. Mark said this issue was discussed at the conditional use hearing. Fertilizers were outlawed in that area

anyway. They were willing to include language in the CC&R's clarifying that, and even limit the use of natural fertilizers that didn't violate the existing ordinance. Steve thought the problem was nutrients got washed into the lake, whether they were natural or synthetic, and caused problems with the lake. He didn't think natural fertilizers were allowed either. Barbara said they paid attention to the algae and such, and gave some examples. Steve said his suggestion in September would be given the high impervious surface area which would generate a lot of stormwater runoff, and given the pervious land would have to be very efficient at handling those nutrients before they arrived at the lake, it might require something other than lawn. Steven E repeated they didn't fertilize the lawn.

Steve mentioned on the parkland issue, maybe they could contribute to maintenance of a close-by County park or other lake access to make up for the square footage. Robert Smith, with A 2 Z Engineering, said they were evaluating alternatives. His company was addressing parts of the project including the stormwater, septic, water rights and treatment systems. They would continue to work with staff as far as the parkland dedication on some ideas to increase that.

Janet expressed concerns with some of the parking spaces: #24, 25 and 27. Was there adequate turning distance for people to back up? The spots were tight. Barbara said for their 10 years, no one had backed into another. These were existing. Bryan asked how someone got out of parking space #2. Barbara explained that was used for employee parking. It was by the teepee and the drainfield. Janet said she would like to see a dimension (a width) between #25 and #27 in case a fire truck needed to get down to units 8 and 9. Mark said the fire chief's plan in the February mockup was to park the truck on the highway and drag hoses down. Brian Anderson asked about ambulance access. Barbara said 3 ambulances had been down, and had no problem getting all the way to the house. They had to pull somebody off the dock, and took a gurney from the house to the dock. There was also a side part on the north side of the property where a ramp goes down, and someone was taken out that way from the dining room. She had been taken out also.

Janet mentioned the lawn. It was also to trap sediments as well as nutrients. She requested that they leave a strip unmowed to trap the sediments. Barbara said there were several strips: walking paths, planted areas and a seawall on the south side of the dock with a rock seawall on the other side.

John asked if there would be an impervious surface/storm water plan that the Board would see. It was nearly 100% impervious surface. Robert Smith answered the storm water requirements were to meet the current DEQ requirements. No new buildings were being added. The requirement was if you were dumping water onto a neighboring property, that this was not damaging. If you were discharging to surface water, you needed to watch the quality of it. The places it was put onto a neighbor were the parking lot half way up the hill and on the north end. That's why they proposed some kind of gallery there to catch the water and let it infiltrate. For the discharge to a surface water body, that was on the lakeshore, and had already been discussed at length, with the lawn areas and things like that. John asked if there were standard studies to show that this type of lawn or buffer would be effective. Robert replied WA, OR and CA adopted and did much research on these things on the west coast. This area was naturally well

suited, since there was basically a bench of lawn area underlain by standard gravelly soil, because of the seawall. Naturally, it was a pretty much top-notch system.

Public Comment:

Christie Buffington: She was with the Flathead Lakers. Her concern was on water quality. The site Many Springs was aptly named, with many springs that became surface water. With regards to the buffer, she just heard the gravel substrate would be a top-notch filtration system. She clarified that it was not. It would not remove nitrogen and phosphorus. That would run right below the seawall and into the lake. There was much research from the western states and also MI, MN and WI on beautiful buffers and what they can look like to incorporate lawn areas and incorporate mixed vegetation that would not block a view. She would be happy to meet with people and show some examples of how water quality and some of the goals of having a lawn area could both be achieved.

Jerry Decant: He was from Ferndale. Listening to the water runoff issue, he heard the comment on the studies from the western states. He thought those should be incorporated into the proposal rather than just by reference to those locations. He was a geographer, and wondered if anybody had done a water balance site, with how much precipitation and how much water comes in. Would the buffer be sufficient to take care of those, especially during a spring run-off period of time? There would have been fewer cars there, but all of the accumulated oil and brake parts etc, would be washed off, hopefully into the buffer to be cleansed. He thought those issues should be addressed.

Public comment closed.

Bob asked if there were different subdivision review criteria in this area for condo projects and for motels. Joel replied they would both be prohibited if new. If unzoned, there would be different requirements. The motel typically wouldn't undergo subdivision review. Condominimizing single-family residential units would. Bob checked that in an unzoned area, a person could go in and build a motel, and then condo it. Joel explained they would need to get subdivision approval when they went to condo it.

Steve commented when land use changed, it was an opportunity for the owners and community to get together and make some updates from some existing uses and applications. He would be looking for changes and improvements. John agreed.

Barbara commented that 10 years ago, the problems with the property were extensive. They chose to make improvements, although they didn't have to at that time. At this point, if you came down the driveway and looked at the lay of the land, it would be almost impossible to change what was there now, as far as the driveway. As far as the buffer zone, it was suggested to dig up the whole front of the property and plant 50 new trees and bushes. The estimate for this was \$15,000. It would probably cost more like \$75,000 based on the landscaping that they had done at the time. They put an extensive amount of money into that and into the site improvements at the time. They won't make much money if they sell the units. They have over 5 million dollars invested in there, that was spent mostly locally. To sell them, they would be

lucky to get that money back out. Because of their age, they were hoping to find somebody to come in and do that same public service that they had. She didn't know that they had the wherewithal to change the driveway and the buffer zone at this point. They didn't want to make it worse, and they tried to make it better, and tried not to have all that runoff. If they could do something with the parking lot, the one parking lot is a bigger issue. Even in downpours, there wasn't that much water that came down from the hillside. There were a lot of retaining walls and blocks and natural vegetation that they planted on several different areas that it did help keep that runoff.

Bob noted one of the review criteria the Board looked at was effects on the natural environment. The Board would probably want to see some hard science on the buffer strip. Barbara asked about the variance procedure they'd gone through. She thought that was to answer that. Joel asked what Bob was looking for as far as hard science. Bob thought Steve, Janet and John were indicating a concern about the buffer strip just being a grass buffer strip. With the statement that the gravel would catch the nitrates, the Board has a conflict from the public that the gravel didn't catch nitrates. With the review criteria for the effects on the natural environment, they would probably look at that pretty hard. He was just saying it was a point they would want to look at. Robert said you needed to look at the total environmental. They're looking at it as it comes in—what about the generators? You had to take both sides. Bob said they understood that. It was always a concern when things got close to the lake.

Joel asked if there were something in particular the Board would like the applicants to submit for review. Bob thought the buffer strip seemed to be a concern, such as the comment that the grass wasn't good enough to catch what's coming off the impervious surfaces there. Would DEQ handle that? Joel said he would be surprised at DEQ requirements for stormwater managements beyond what was proposed, to manage what was impacting the north property. They did have a variance so they didn't have to meet the buffer requirements of the East Shore zoning regulations. They still had to address section 4.A.21 of the Lake County subdivision regulations. They submitted a buffer strip plan to address this. The plan was to manage it in compliance with the Lakeshore Protection regulations.

Janet asked Tiffany for her comments as far as management in compliance with the current Lakeshore regulations. Tiffany replied the buffer area in the current regulations had been identified as an area that needed attention in the regulations update. She read what the current regulations said with respect to vegetation. 'Removal of native vegetation shall be part of a total landscaping plan for a property and shall be reviewed on a case-by-case basis.' In its current form, there was nothing that didn't meet the regulations, because the regulations didn't say much about that. Joel agreed there was not a significant stormwater section and the vegetation was limited to what Tiffany said. John asked if they were just guessing that they needed 50' and guessing that certain plants would do a certain thing, when the Board had a subdivision on a lake. Tiffany said no. Since the lakeshore regulations were put together, some of the zoning districts had a buffer component that talked about the 50' vegetative buffer. Those had more standards and talked about trees, shrubs, duff layer and things like that, and the purpose of that. She thought the lakeshore regulations needed to catch up with those. There was a lot of science out there about buffers.

Janet noted the variance was that the applicants did not have to comply with the 50' buffer. Could the Board ask for a 10' buffer, and install vegetation with a duff layer and maybe some tall unmown grasses? Joel thought they could make a recommendation. He pointed out the main thing the applicants would be doing was filing paperwork with the Clerk and Recorder's office. They were not changing the physical natural of the property at this time.

Steve said when someone said they were going to plant grass and promised not to fertilize it, it raised a question in his mind. Not fertilizing native plants made more sense to him. Sigurd pointed out that they've had a lawn for 50 years right on the lake and they never put any fertilizer on it. Steve asked if it was full of weed. Sigurd said they keep pulling the weeds. Barbara said that was what they did. They mulched it and they dug out the dandelions. Sigurd noted it wasn't required to use fertilizer. Harlan mentioned that he ran a lawn care business. He mowed 100 yards on the lake. Of those 100 yards, there weren't 10 of them that were fertilized. Most of the people were pretty conscious about it. The lawns were mowed every week. They weren't full of weeds.

[Mark] said Steve and Barbara demonstrated over the course of the time they've owned this property that they were very sensitive to the quality and nature of the lake. Barb added they drink water out of the lake. Mark continued to recap their improvements on septic and stormwater. At this point, he asked if there was something they had not done as far as meeting the subdivision requirements at this stage. Barbara said that one reason they put so many restrictions in the CC&R's is because of the size of the property. They do not allow boat trailers or RV's. If the Board wanted, they would be happy to put in a requirement that there's no fertilizer used on the grass. She wasn't saying at some point they couldn't figure out some way to plant a bush or low hedge in there, maybe above the pathway for the condos next door. It might be a possibility. At this point, she wasn't averse to hearing suggestions, but what was suggested for replanting that area would have cost \$75,000, and they couldn't do it. They still tried to provide a lawn area that didn't run down to the lake. It had a buffer with the seawall and other planting. She described it further.

Joel clarified that the applicants had met the requirements. This Board might make findings on the natural environment. Mark said they would provide more information and try to answer some of the questions and concerns. Steven E suggested they come out and look at what was there. They didn't have that runoff. Barbara suggested walking the property from the top where the tipi was, all the way down to see the vegetation. Joyce T-Weaver added a concern of the Board was also to remember future owners had to be considered. Putting it in the covenants was an excellent idea so future owners would also adhere to what the current owners already started. Barbara thought Joel addressed future management in his recommendations.

LAKESHORE REGULATION UPDATE

Tiffany Lyden introduced and overviewed the lakeshore regulation update process. This was the third work session.

Dredge and Fill:

Tiffany pointed out the chart comparing current standards, Tribal standards and Flathead County standards. She moved to the Dredge and Fill draft, with changes in text tracked. She talked about the Policy section first, and then moved to Standards.

She described that when gravel was removed from a dock area, it didn't get removed from the lake. It should stay in the area. A lot of contractors would remove gravel from an area where it's piled up, and often deposit it nearby on the shoreline. She added to the regulations that it should stay in the riparian area of the landowner where it was getting removed, and not affect erosion on a neighboring property. Sue Laverty asked why it wasn't hauled out. Tiffany replied that the sense was you'd be mining natural gravel from the lake, if it were taken out and used for landscaping purposes several miles away. There's some uneasiness about removing that natural material. Janet mentioned it provided a small amount of stability better than silts or fines would, thus making it better for water quality purposes to keep that gravel layer next to the silt. Tiffany said maintaining that kind of armament on the bottom should be in there. You don't want to expose some of those fine materials.

Janet checked where the dredging would be. Tiffany replied this would be in the lake below high water, and confirmed with Janet that these regulations would be for the part of the lake that Lake County administers and had jurisdiction over, so this would just be the north part of the lake for dredging. Janet suggested a footnote in the dredge and fill section to clarify that this was not allowed in the south part of the lake. Tiffany noted that they did seem to do gravel removal. Janet said they could come back to this.

Christie Buffington asked how gravel was defined. Was it defined by particle size? Was it the formal definition of gravel? Tiffany explained they would cover definitions more towards the end. There wasn't one currently, but they could have a definition. Christie detailed that gravel was very small from a soil science definition. Sand was about 2mm, and gravel was the size class above that. Most people would call that sand. She thought if there were a definition of gravel, it might have to be a particle size. That definition might differ, whether it was an engineering definition or a soil definition. Mike Wolstein commented that from a contractor's point of view, removal of gravel from the lakebed would do more disturbance to the lakeshore by trying to get it out of the lake and haul it away than you would by redistributing it. Steve checked that dredging was only done at low pool, and between low pool and high pool lines only. He wondered if that needed to be said.

Tiffany said the intention was to address gravel sensibly, and to try to limit other dredging. Other reasons for dredging could be addressed by variance. Those areas would need to be stabilized with some sort of protective armament.

Joyce T-Weaver pointed out 'as soon as possible' in 2.e was subjective. She suggested changing this to something like 'as soon as possible or within 3 months' or whatever time frame seemed appropriate.

Steve mentioned a situation in Flathead County where someone proposed to remove logs from the lake bottom. The definition here of dredging might mean anything, or would it just mean

gravel? Did they need to be specific? Tiffany said the current definition said 'material' and not 'gravel'.

John asked on 2b, if the change meant you couldn't dredge silt or sand. Tiffany said this could still be done by variance. She thought this was what was wanted. Dredging the finer materials had a potential for a lot of water quality concerns. John agreed. He suggested maybe saying it as dredging for any other purpose of any other materials. She repeated back that they were okay with gravel, provided it met these things, but smaller or other materials would require a variance.

[Jim] noted that earlier it was said the only dredging that would be allowed was on the shoreline between low and high water. To him, that wasn't what he thought of when someone said 'lake bottom'. When you say lake bottom here, you may be able to say the lake bottom between low pool and high pool. Tiffany thought the gravel removal would be that exposed lakebed between high water and low water. Dredging deeper than that would need to be a variance. Jim suggested making this policy for dredging be for the lake bottom between low pool and high pool, and that any other dredging would require a variance. Tiffany thought she might need to rework how this was laid out.

Bob asked what 2.g meant, with fill. Tiffany explained 2.g was an exception, for instance if a big storm washed away part of your shoreline. You could reclaim that area if it was within the same year. It did allow for limited filling back to what you had. John thought 2.g was trying to distinguish between the violent storm that ripped something out and the slow, long-term erosion over time, which you are not allowed to fix. He thought if the erosion was something ongoing, happening slowly over time, then it was not permitted to fill that. He thought you should also have something so if something takes away a bunch of your land, you could fix it within a year. You don't want to change the natural slow process, though. Mike commented that Flathead County would allow a fix of erosion that occurred over an extended period of time, and it required a variance with the County commissioners. You said natural erosion, but if the neighbors down the way rebuild their dock or change it, it can drastically change the way the currents were on your shoreline. He thought a year was a really short period of time. Some people didn't realize what disappeared, especially if they weren't year-round residents. Brian knew of properties on the arm of Woods Bay where there was a space of nothing useful for 5' where there's riprap that used to be well established. Everything was washed out from behind it. They couldn't get to anything. He guessed remove the old rip rap and just call it the lakeshore line.

John asked Mike if 2.g was a problem to him. Mike said his 2 concerns were a pretty short period of time, and where the burden of proof lay to show it occurred within that time period. Did the homeowner have to provide photographs, or did the County decide that? Tiffany thought the homeowner would be proving that. It was hard on Flathead Lake. It was an unnatural lake system, being held at high water with the dam. The shoreline tries to reestablish a natural shoreline. They would have more erosion occurring, natural or not, that they would have on a lake that was allowed to fluctuate more naturally. She did feel 2.g should have some period of time with it. Sue Laverty agreed. She agreed that the long process of natural movement of the shoreline should not be changed. Steve thought the section on breakwaters talked about a distance rather than a period of time, where you could recover 3 feet out. Maybe a distance

could be used with this section here, rather than a time. When the breakwater section was done, thought ought to be given to how it would fit with fill standards to make sure they are compatible.

Christie asked if the cause of erosion needed to be defined, and by defining the cause, thus get at the timescale. They wouldn't be able to catch all causes, but they could address some of them. John suggested things like unique events, or changes caused by neighbors. Mike said a number was more defining. Tiffany thought it was somewhat of a moving target. She didn't want to prevent people from trying to get back some of the natural functions of the shoreline, those 'good for the lake' projects. She didn't want prevent people from reestablishing a gravel beach, for instance. Christie thought those might potentially be allowed by variance. Steve thought there was a difference between projects for the purpose of reclaiming property versus other purposes. Tiffany said she would look at language. Steve cautioned about language, since some would term the dam and effects as man-made. Tiffany said some sections might need to change for consistency.

Bob pointed to 2.k. He asked where the rocks from a dismantled crib dock would go. Tiffany asked where the rock came from to begin with. In one case, they spread the rocks around the area on the exposed lakebed. If there were large boulders that didn't seem to come from that shoreline area, she thought they needed to be removed to avoid strange wave dynamics. If they were smaller and appeared to match existing conditions, maybe they could be placed in that area. She asked the Board for their thoughts on that. Steve described dismantling a crib dock when they bought their property. The cribs were filled with things other than rocks, such as concrete and cement blocks, so some things were obviously not natural to the lakebed. It seemed obvious those things should be moved. Tiffany said 2.k didn't address removal of a crib. If rocks fell out, you could put them back in. In the dock section, where there were some things about crib docks, maybe something could be put in about removal of crib docks.

Tiffany pointed out a clarification to 2.i. With 2.l, this came from Flathead County. She added 'on the lakebed' to i. She left in 2.l.v in for comment, and referred to an example in Swan Lake where someone dumped a lot of gravel to try to create a dry area to walk on, which was probably not particularly good for the lake. This would limit that. The number in 2.l.vi came directly from the Army Corp of Engineers. You had to get a permit from the Army Corp of Engineers when putting fill on the bed of the lake off the Reservation. She received comments asking for reference to some other permits from other agencies that would be required for fill, so she included 2.m.

Jim asked if she intended to have the same 1-year requirement cutoff on reestablishing gravel beach. Tiffany said she did not, and explained that in some cases it might be a better alternative to protect a property than a seawall. Seawalls have negative outcomes in a lot of places. She didn't want to limit that option based on a timeframe. Jim thought it was a conflict with the other 1-year timeframe, since you really were filling. Tiffany suggested distinguishing between those things. She asked Mike what sort of requests from landowners he got for fill, as a contractor. He replied usually a seawall would have fill behind it. In Flathead County, that requires County Commissioners' review. It tended to go hand in hand with the redistribution of gravel. It's moved around. Gravel may have come from 2 properties down. A one-year time

limit would mean you might have to get a machine in there every year and redistribute the gravel or you couldn't do it. That might occur over every 5 or 6 years. Christi said again you could distinguish the purpose, and add other sections. For example, with dredge the purpose would be to remove accumulated gravel, and other purposes for dredging could be listed. For fill, there could be fill projects for the purpose of expanding the land area exhibited, or for the purpose of reclaiming property. Then there could be a time limit or a distance on that. Next they could add fill projects for the purpose of reestablishing a gravel beach, or for redistributing gravel, or for establishing a seawall. The purposes could be clarified. Likewise they could say that fill for any other purpose is prohibited. Christie asked why dredge and fill were lumped. Could they be separate categories? Tiffany agreed that would be helpful. They'd been lumped in the past.

Tiffany showed a photo of fill to avoid. She showed another photo where landowners and the Biostation worked together to address some severe erosion problems without having to put up a seawall. She thought addressing the purpose might help get to where we wanted to go with this. Christie returned to the size of particles in 2.k. In the photo, what was being called gravel would be a cobble in the size classification. It wouldn't be gravel either in soil or engineering definitions. Sue L thought without a size measurement, it could be interpreted very broadly.

Janet suggested adding that a CS&KT permit may be required with 2.l.vii and with 2.m.

Brian thought the project for the severe erosions problems would last about a year. Tiffany explained that Mark Lorang (Biostation) was heavily involved in this project. He designed it and figured out the size of rock to use and the height and so forth. He would be monitoring it over the year. Some projects, where you just dump gravel don't do anything and should be avoided. Where something can have hopefully an engineered design, it's going to move around, and that was the idea. She reported that Mark L thought the one mentioned above would be in place for quite a long time, although it would certainly change.

Brian asked about impacts on the neighbors. If there are cribs next door, with October storms, will the gravel be dumped on the neighbors, who will then ask to dredge the next spring? Tiffany said in the case of the example in the photo, the neighbors worked together and one opened up her crib. Because it was just 2 neighbors and a small area, a variance was done to fill it back in to try to keep some of that in place. The gravel had what was called a cell, which moved varying distances. Two properties would be a small part of that, so you're trying to create a mini-cell to keep much of the gravel in that area. She showed in the photo where a retaining wall went in a few years ago, and where scour resulted in another spot. Brian understood. He was not a proponent of seawalls everywhere. He ran into that when doing consulting, where people would propose that, which was a big expense, and didn't realize it would be a yearly thing. He didn't find much to support it when he dug through the literature. He didn't know if she had information about fill and clast size. Tiffany thought Mark Lorang understood a lot of that. She hoped they would see more of that and get more knowledge through consultants or other things where some of that engineering was occurring.

Christie pointed to 2.l.iv. A potential flag was the seawall in the photo included fines. That would not be good adjacent to the lakeshore. Tiffany pointed to the first sentence of all fill shall

be clean, washed rock. Steve suggested the existing wording should be further defined as 'natural' existing if such existed.

Tiffany encouraged people to forward other comments that they may have later on.

Bob checked with the Board. It seemed better to save the next section for the next time, given the hour.

OTHER BUSINESS

Joel touched on the upcoming items.

Motion made by John Fleming, and seconded by Sigurd Jensen, to adjourn. Motion carried, by general consent. Meeting adjourned at approximately 10:30 pm.